

## **REMARKS**

This is a full and timely response to the outstanding non-final Office Action mailed April 20, 2006. Upon entry of this response, claims 1 – 38 and 48 – 58 remain pending. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

### **I. Specification Objection**

The Office Action objects to the disclosure because blank spaces are present in the first paragraph of the application. In an effort to accommodate the Office Action's request, Applicants amend the specification by inserting the proper application numbers into the blank spaces. Applicants submit that no new matter is added.

### **II. Rejections Under 35 U.S.C. §103**

In order for a claim to be properly rejected under 35 U.S.C. §103, the teachings of the cited art reference must suggest all features of the claimed invention to one of ordinary skill in the art. *See, e.g., In re Dow Chemical*, 837 F.2d 469, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 642 F.2d 413, 208 U.S.P.Q. 871, 881 (C.C.P.A. 1981). Further, “[t]he PTO has the burden under section 103 to establish a prima facie case of obviousness. It can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.” *In re Fine, Minnesota Mining and Mfg. Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002).

A. **Claim 1 is Patentable Over Bowman-Amuah in view of O'Flaherty, and further in view of Tunnicliffe**

The Office Action indicates that claim 1 stands rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Publication No. 2000/6542593 (“*Bowman-Amuah*”) in view of U.S. Publication No. 2000/6253203 (“*O'Flaherty*”), and further in view of U.S. Publication No. 2000/6272110 (“*Tunnicliffe*”). Applicants respectfully traverse this rejection for at least the reason that *Bowman-Amuah* in view of *O'Flaherty*, and further in view of *Tunnicliffe* fails to disclose, teach, or suggest all of the elements of claim 1. More specifically, claim 1 recites:

- A method of providing network access across a shared communications medium between competing users pursuant to service level agreements (SLAs) of the users, comprising the steps of:
- (a) monitoring network access usage by each user during a time interval;
  - (b) comparing said monitored network access usage by each user with a predetermined threshold value;
  - (c) in response to comparing, *determining at least one candidate for modification of an SLA*;
  - (d) *filtering at least one candidate against a list of candidates* for which a solicitation is not to be made; and
  - (e) soliciting at least one filtered candidate to modify an SLA related to that candidate. (*emphasis added*)

Applicants respectfully submit that the cited art fails to disclose, teach, or suggest a “method of providing network access... comprising the steps of... in response to comparing, *determining at least one candidate for modification of an SLA*” as recited in claim 1. More specifically, *Bowman-Amuah* appears to disclose a “Proactive Threshold Manager [that] uses the information... to determine a current level of service and compare the current level of services with the minimum level of service that the service provider can provide without violating SLAs” (col. 52, line 49). Applicants respectfully submit that nowhere in this passage, nor elsewhere in *Bowman-Amuah* is there suggestion of “in response to comparing, *determining at least one candidate for*

*modification of an SLA*" as recited in claim 1. Additionally, Applicants submit that neither *O'Flaherty* nor *Tunnicliffe* overcome the deficiencies of *Bowman-Amuah*. For at least these reasons, claim 1 is allowable over the cited art.

Applicants additionally submit that the cited art fails to disclose, teach or suggest a "method of providing network access... comprising the steps of... *filtering at least one candidate against a list of candidates* for which a solicitation is not to be made" as recited in claim 1. More specifically, *O'Flaherty* appears to disclose an "opt-in/opt-out" indicator... [that allows] any customer who has opted out from receiving marketing solicitations would be omitted from any contact list created by the marketing application" (col. 9, line 18). Applicants respectfully submit, however, that *O'Flaherty* fails to disclose "*filtering at least one candidate against a list of candidates* for which a solicitation is not to be made" as recited in claim 1. Additionally, neither *Bowman-Amuah* nor *Tunnicliffe* overcome the deficiencies of *O'Flaherty*. For at least these additional reasons, claim 1 is allowable over the cited art.

**B. Claim 48 is Patentable Over Bowman-Amuah in view of O'Flaherty, and further in view of Tunnicliffe**

The Office Action indicates that claim 48 stands rejected under 35 U.S.C. 103(a) as being unpatentable over *Bowman-Amuah* in view of *O'Flaherty*, and further in view of *Tunnicliffe*. Applicants respectfully traverse this rejection for at least the reason that *Bowman-Amuah* in view of *O'Flaherty*, and further in view of *Tunnicliffe* fails to disclose, teach, or suggest all of the elements of claim 48. More specifically, claim 48 recites:

A method of providing network access across a shared communications medium between competing users pursuant to service level agreements (SLAs) of the users, comprising the steps of:

monitoring network access usage by each user for respective predetermined past time intervals;

identifying a recurrent period of high network access usage of a user based on said monitoring;

*determining at least one candidate for modification* of an SLA;

filtering at least one candidate *against a list of candidates for which a solicitation is not to be made*; and

soliciting at least one filtered candidate to modify an SLA associated with that filtered candidate to guarantee a minimum level of network access during an anticipated future recurrent period of high network access usage. (*emphasis added*)

Applicants respectfully submit that the cited art fails to disclose, teach, or suggest a “method of providing network access... comprising the steps of... *determining at least one candidate for modification* of an SLA” as recited in claim 48. More specifically, *Bowman-Amuah* appears to disclose a “Proactive Threshold Manager [that] uses the information... to determine a current level of service and compare the current level of services with the minimum level of service that the service provider can provide without violating SLAs” (col. 52, line 49). Applicants respectfully submit that nowhere in this passage, nor elsewhere in *Bowman-Amuah* is there suggestion of “*determining at least one candidate for modification* of an SLA” as recited in claim 48.

Additionally, Applicants submit that neither *O'Flaherty* nor *Turnicliffe* overcome the deficiencies of *Bowman-Amuah*. For at least these reasons, claim 48 is allowable over the cited art.

Applicants additionally submit that the cited art fails to disclose, teach or suggest a “method of providing network access... comprising the steps of... filtering at least one candidate *against a list of candidates for which a solicitation is not to be made*” as recited in claim 48. More specifically, *O'Flaherty* appears to disclose an “opt-in/opt-out” indicator... [that allows] any customer who has opted out from receiving marketing solicitations would be omitted from any contact list created by the marketing application” (col. 9, line 18). Applicants respectfully submit, however, that

*O'Flaherty* fails to disclose “filtering at least one candidate *against a list of candidates for which a solicitation is not to be made*” as recited in claim 48. Additionally, neither *Bowman-Amuah* nor *Turnicliffe* overcome the deficiencies of *O'Flaherty*. For at least these additional reasons, claim 48 is allowable over the cited art.

**C. Claims 2 – 8 and 49 – 58 are Patentable Over Bowman-Amuah in view of O'Flaherty, and further in view of Tunnicliffe**

The Office Action indicates that claims 2 – 8 and 49 – 58 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Bowman-Amuah* in view of *O'Flaherty*, and further in view of *Turnicliffe*. Applicants respectfully traverse this rejection for at least the reason that *Bowman-Amuah* in view of *O'Flaherty*, and further in view of *Tunnicliffe* fails to disclose, teach, or suggest all of the elements of claims 2 – 8 and 49 – 58. More specifically, dependent claims 2 – 8 are believed to be allowable for at least the reason that these claims depend from allowable independent claim 1. Dependent claims 49 – 58 are believed to be allowable for at least the reason that they depend from allowable independent claim 48. *In re Fine, Minnesota Mining and Mfg. Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002).

**D. Claims 9 – 10, 12 – 13, and 21 – 23 are Patentable Over Bowman-Amuah in view of O'Flaherty in view of Tunnicliffe, and further in view of Williams**

The Office Action indicates that claims 9 – 10, 12 – 13, and 21 – 23 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Bowman-Amuah* in view of *O'Flaherty* in view of *Tunnicliffe*, and further in view of U.S. Publication No. 2000/5867764 (“*Williams*”). Applicants respectfully traverse this rejection for at least the reason that *Bowman-Amuah* in view of *O'Flaherty* in view of *Tunnicliffe*, and further in view of *Williams* fails to disclose, teach, or

suggest all of the elements of claims 9 – 10, 12 – 13, and 21 – 23. More specifically, dependent claims 9 – 10, 12 – 13, and 21 – 23 are believed to be allowable for at least the reason that these claims depend from allowable independent claim 1. *In re Fine, Minnesota Mining and Mfg Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002).

## **CONCLUSION**

For at least the reasons set forth above, Applicants respectfully submit that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested.

Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and Official Notice, or statements interpreted similarly, should not be considered well-known for the particular and specific reasons that the claimed combinations are too complex to support such conclusions and because the Office Action does not include specific findings predicated on sound technical and scientific reasoning to support such conclusions.

If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,



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